

BEFORE THE
POSTAL REGULATORY COMMISSION

Annual Compliance Report 2021

:
:
:

Docket No. ACR2021

**UNITED PARCEL SERVICE, INC.'S MOTION REQUESTING
ACCESS TO NON-PUBLIC MATERIALS UNDER
PROTECTIVE CONDITIONS
(January 19, 2021)**

United Parcel Service, Inc. ("UPS") respectfully submits this Motion pursuant to 39 C.F.R. § 3007.301 requesting access to non-public library references from Docket No. ACR2021 (USPS-FY21-NP2, NP3, NP7, NP8, NP9, NP10, NP11, NP12, NP13, NP14, NP19, NP20, NP21, NP22, NP23, NP24, NP30), which the United States Postal Service filed with the Commission on December 29, 2021, as part of the Postal Service's Annual Compliance Report ("ACR"). In addition, UPS requests an extension of access to non-public library references from Docket Nos. ACR2014, ACR2015, ACR2016, ACR2017, ACR2018, ACR2019, and ACR2020, which the Commission originally granted to UPS's outside counsel and consultants for use in Docket Nos. ACR2014, ACR2015, RM2016-2, ACR2016, ACR2017, ACR2018, ACR2019, and ACR2020.¹ UPS has conferred with the Postal Service, which has indicated that it

¹ See Order Granting Unopposed Request For Continued Access to Non-Public Materials Under Seal, Dkt. No. RM2016-2 (Oct. 15, 2015) ("Order No. 2756") (granting access to non-public ACR2014 library references previously granted in ACR2014 for use in RM2016-2); Order Granting First Motion for Access, Dkt. No. ACR2015 (Jan. 15, 2016) ("Order No. 3033") (granting access to non-public ACR2015 library references for use in ACR2015 and RM2016-2); Order Granting Revised Second Motion for Access, Dkt. No. ACR2015 (Jan. 22, 2016) ("Order No. 3044") (granting access to one additional non-public ACR2015 library reference for use in ACR2015 and RM2016-2);¹ Order Granting Motion for Access, Dkt. Nos. ACR2016 & RM2017-1 (Jan. 10, 2017) ("Order No. 3741"); Order Granting Motion for Access, Dkt. No. RM2017-1 (Feb.

consents to this motion for access with respect to folders NP10, NP11, NP12, NP13, NP19, NP20, and NP21, but reserves the right to oppose the motion with respect to folders NP2, NP3, NP7, NP8, NP9, NP14, NP22, NP23, NP24, and NP30, insofar as third party information is implicated, and with respect to the request for continued access to folders from previous years.

UPS seeks access to the library references for its outside counsel and consultants only, so they may assist UPS in making informed comments in numerous pending and upcoming dockets, including the Commission's fiscal year ("FY") 2021 Annual Compliance Determination ("ACD") proceeding and the appropriate share requirement review (RM2022-2). See Dkt. No. ACR2021, Order No. 6079 (Jan. 3, 2022), at 6 (inviting comments). These outside counsel and consultants are identified in Exhibit 1, attached hereto, and each has executed a copy of the Commission's protective order conditions.

In determining whether to grant access to non-public data, the Commission "shall balance the interests of the parties consistent with the analysis undertaken by a Federal court when applying the protective conditions appearing in Federal Rule of Civil Procedure 26(c)." See 39 C.F.R. § 3011.301(e). UPS's request satisfies this test. The requested materials are relevant to assessing whether the Postal Service complied in 2021 with the mandate of the Postal Accountability and Enhancement Act ("PAEA") that the Postal Service's competitive products pay their own costs, without subsidy from

3, 2017) ("Order No. 3771"), Order Granting in Part Motion for Access, Dkt. No. ACR2018 (Feb. 1, 2019) ("Order No. 4996"); Order Granting Motions for Access, Dkt. No. ACR2018 (Feb. 8, 2019) ("Order No. 4998"); Order Granting Motion for Access, Dkt. No. ACR2019 (Jan. 29, 2020) ("Order No. 5416"); Order Granting Motion for Access, Dkt. No. ACR2020 (Jan. 28, 2021).

market-dominant products (see 39 U.S.C. § 3633), and UPS has a substantial interest in the subject-matter of this docket.

The Postal Service filed its ACR for FY2021 on December 29, 2021, and the Commission has initiated a proceeding seeking comments on that Report, including issues like “cost coverage matters the Postal Service addresses in its filing.” Order No. 6079, at 5. In support of its ACR, the Postal Service relies extensively on non-public materials filed under seal. Although the Postal Service has provided public library references, the extent of the analysis that can occur with the publically available data is limited. For example, Public Library Reference USPS-FY21-43 displays “group incremental costs for four of the six competitive product groups for which volume variable and product specific costs are shown in the Public CRA (USPS-FY21-1).” Docket No. ACR2021, USPS-FY21-9 at 49 (“ACR2021 Roadmap”) (Dec. 29, 2021). The competitive product cost data “however, are developed in USPS-FY20-NP10, and are merely reproduced here as results.” *Id.* Without the Postal Service’s underlying data and analysis contained in USPS-FY20-NP10, UPS will be unable to meaningfully offer potential comments on whether the results are in compliance with the applicable provisions.

USPS-FY20-NP11 contains the Nonpublic Cost and Revenue Analysis, which “displays revenues, attributable costs, volume variable costs, unit contribution, cost coverage, volumes, and weights for each of the Postal Service’s products.” ACR2021 Roadmap at 63. The Public Cost and Revenue Analysis, USPS-FY21-1, however, contains only “summary information” “[f]or [c]ompetitive products.” ACR2021 Roadmap at 1. Meaningful comment on whether competitive product rates or fees in effect during

FY2021 were in compliance with applicable provisions will not be possible without access to the Nonpublic Cost and Revenue Analysis.

USPS-FY21-NP12 contains the “Non-Public Cost Segments and Components” which is “an output . . . of the FY 2021 Cost and Revenue Analysis [] Model” contained in USPS-FY21-NP13. ACR2020 Roadmap at 64. This data is essential to commenting meaningfully on cost coverage matters the Postal Service addresses in its filing and service performance results.

USPS-FY21-NP13 “contains the Cost and Revenue Analysis (CRA) Model along with associated cost matrices and reports.” ACR2021 Roadmap at 65. Without the model itself, UPS’s outside counsel and consultants will be unable to verify whether the figures presented in USPS-FY21-NP11 and USPS-FY21-NP12 are accurate and complete, nor will they be able to assess whether superior modeling is possible.

USPS-FY21-NP14 is “used to calculate volume variable and product specific costs for Market Dominant products and summary information for Competitive products for 12 of the 17 costs segments.” ACR2021 Roadmap at 67. USPS-FY21-NP14 provides detail on those calculations as they pertain to individual competitive product groups, such as Priority Mail and Parcel Select. In light of large differences in both the cost structures of individual competitive products and the extent to which individual competitive products are covering their incremental costs, access to NP14 is necessary to understand and comment meaningfully on whether the rates of individual products were in compliance with applicable provisions of section 3633, as well as on other cost coverage matters addressed in ACR2021.

USPS-FY21-NP19 documents the Non-Operation Specific Piggyback Factors. ACR2021 Roadmap at 74. Access to this library reference is necessary to understand and comment on the extent to which changes to the costs attributed in certain cost components affect costs attributed in other components at the individual competitive product level.

USPS-FY21-NP20 contains “mail processing costs by shape for First-Class Package Service, Parcel Select, and Parcel Return Services.” ACR2021 Roadmap at 75. The corresponding public library reference USPS-FY21-26 provides mail processing costs by shape for First-Class Mail, Periodicals, Marketing Mail and Package Services, without the breakdown provided by NP20.

USPS-FY21-NP30 contains non-public service performance material, including “the non-public portion of the annual report on the service performance of market dominant products,” “non-public materials associated with the FY 2020 Annual Performance Report and FY 2022 Annual Performance Plan,” and certain “non-public third-party service performance results” that are not available in the corresponding public library reference USPS-FY21-29. ACR2021 Roadmap at 85. There are no competitive concerns in providing access to even this “commercially sensitive” material, *id.*, because access is limited to UPS’s outside counsel and consultants.

Similarly, Library References USPS-FY21-NP21, NP22, NP23, and NP24 document the statistical design for several key data systems underlying cost estimates, cost pool formation, volume estimates, and distribution keys for several major cost segments.² The public versions of these library references lack detail about the

² Respectively, NP21 documents the In-Office Cost System (“IOCS”), NP22 documents the City Carrier Cost System (“CCCS”) and the City Carrier Cost System – Special Purpose

volumes of and costs associated with individual competitive products, instead lumping all competitive product volumes and costs together. Given the significant differences, as discussed above, in the cost structures and cost coverages of individual competitive products, this aggregation of data may not contain important details relevant to the compliance of individual products with applicable provisions or other cost coverage matters relevant to this docket. Accordingly, access to these four non-public library references is necessary to allow UPS to potentially comment in the most constructive manner possible.

Additionally, UPS requests access to certain nonpublic library references dealing with international competitive products: USPS-FY21-NP2, NP3, NP7, NP8, and NP9. These library references include the International Cost and Revenue Analysis (“ICRA”) Report (NP2), the International Cost Segments and Components Report (NP3), volume variable labor cost data (NP7), the competitive international billing determinants (NP8), and miscellaneous documents including data on international joint ventures and coefficients of variation for various functions (NP9). Meaningful substantive commentary on the Postal Service’s international competitive costing practices is nearly impossible without access to these materials.

Finally, UPS’s outside counsel and consultants believe it may be useful to compare the non-public library references from ACR2014, ACR2015, ACR2016, ACR2017, ACR2018, ACR2019, and ACR2020 with any non-public library references to which its counsel and consultants may be granted access in ACR2021 in preparation of

Route (“CCCS-SPR”), NP23 documents the Rural Carrier Cost System (“RCCS”), and NP24 documents two Transportation Costs Systems, TRACS Air and TRACS Surface (Highway). See ACR2021 Roadmap at 76-79.

its comments in this docket. These materials from ACR2014, ACR2015, ACR2016, ACR2017, ACR2018, ACR2019, and ACR2020 contain important information on cost trends in past periods that are useful for comparison purposes with ACR2021 materials. While UPS's outside counsel and consultants have gained access to the non-public library references in ACR2014, ACR2015, ACR2016, ACR2017, ACR2018, ACR2019, and ACR2020, the Commission has not technically given permission for UPS's outside counsel and consultants to use the ACR2014, ACR2015, ACR2016, ACR2017, ACR2018, ACR2019, and ACR2020 materials for purposes of making comments in this ACR2021 docket. Thus UPS requests that access now.

For the foregoing reasons, UPS respectfully requests that this Motion be granted. Without the requested Non-Public Library References, UPS's outside counsel and consultants will be required to rely on less complete data. UPS's potential comments and expert materials will thus, necessarily, be more meaningful, helpful to the Commission, and complete if access to these materials is granted.

Respectfully submitted,

UNITED PARCEL SERVICE, INC.,

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Attorney for UPS

Exhibit 1

1. Steig Olson
2. David Cooper
3. Christopher Seck
4. David LeRay
5. David Chardack
6. Kevin Neels
7. Nicholas Powers
8. Findley Bowie
9. Elijah LoCicero
10. Chris Zhao
11. Alina Kovalenko
12. Shea Peretz
13. Eannán Monaghan
14. James Banovetz
15. Misha Mubashar Khan

Protective Conditions Statement

The Postal Service requested confidential treatment of non-public materials identified as USPS-FY19-NP2, NP3, NP7, NP8, NP9, NP10, NP11, NP12, NP13, NP14, NP19, NP20, NP21, NP22, NP23, NP24, and NP30 in Commission Docket No. ACR2021, as well as the non-public library references from Docket Nos. ACR2014, ACR2015, ACR2016, ACR2017, ACR2018, ACR2019, and ACR2020 which the Commission originally granted to UPS's outside counsel and consultants for use in Docket Nos. ACR2014, ACR2015, RM2016-2, ACR2016, ACR2017, ACR2018, ACR2019, and ACR2020 (hereinafter "these materials"). UPS (hereinafter "the movant") requests access to these materials related to its potential comments in the ACR2021 docket.

The movant has provided to each person seeking access to these materials:

- this Protective Conditions Statement,
- the Certification to Comply with Protective Conditions,
- the Certification of Compliance with Protective Conditions and Termination of Access; and
- the Commission's rules applicable to access to non-public materials filed in Commission proceedings (subpart C of part 3007 of the U.S. Code of Federal Regulations).

Each person (and any individual working on behalf of that person) seeking access to these materials has executed a Certification to Comply with Protective Conditions by signing in ink or by typing /s/ before his or her name in the signature block. The movant attaches the Protective Conditions Statement and the executed Certification(s) to Comply with Protective Conditions to the motion for access filed with the Commission.

The movant and each person seeking access to these materials agree to comply with the following protective conditions:

1. In accordance with 39 CFR 3007.303, the Commission may impose sanctions on any person who violates these protective conditions, the persons or entities on whose behalf the person was acting, or both.

2. In accordance with 39 CFR 3007.300(b), no person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials shall be granted access to these materials. Involved in competitive decision-making includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with an individual or entity having a proprietary interest in the protected material.

3. In accordance with 39 CFR 3007.302(a), a person granted access to these materials may not disseminate these materials in whole or in part to any person not allowed access pursuant to 39 CFR 3007.300(a) (Commission and court personnel) or 3007.301 (other persons granted access by Commission order) except in compliance with:

- a. Specific Commission order,
- b. Subpart B of 39 CFR 3007 (procedure for filing these materials in Commission proceedings), or
- c. 39 CFR 3007.305 (production of these materials in a court or other administrative proceeding).

4. In accordance with 39 CFR 3007.302(b) and (c), all persons granted access to these materials:

- a. must use these materials only related to this matter; and
- b. must protect these materials from any person not authorized to obtain access under 39 CFR 3007.300 or 3007.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

5. The duties of each person granted access to these materials apply to all:

- a. Disclosures or duplications of these materials in writing, orally, electronically, or otherwise, by any means, format, or medium;

- b. Excerpts from, parts of, or the entirety of these materials;
 - c. Written materials that quote or contain these materials; and
 - d. Revised, amended, or supplemental versions of these materials.
6. All copies of these materials will be clearly marked as “Confidential” and bear the name of the person granted access.
7. Immediately after access has terminated pursuant to 39 CFR 3007.304(a)(1), each person (and any individual working on behalf of that person) who has obtained a copy of these materials must execute the Certification of Compliance with Protective Conditions and Termination of Access. In compliance with 39 CFR 3007.304(a)(2), the movant will attach the executed Certification(s) of Compliance with Protective Conditions and Termination of Access to the notice of termination of access filed with the Commission.
8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.

Respectfully submitted,

UNITED PARCEL SERVICE, INC.,

By: /s/ Steig D. Olson
Steig D. Olson
Quinn Emanuel Urquhart & Sullivan, LLP
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Attorney for UPS

CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as Commission Docket No. ACR2021 has been authorized by the Commission. The cover or label of the copy obtained is marked with my name.

I certify that I have read and understand the protective conditions statement and this certification to comply with protective conditions. I certify that I am eligible to receive access to materials because I am not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.

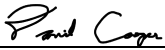
Name	<u>Steig Olson</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Partner</u>
Representing	<u>United Parcel Service</u>
Signature	
Date	<u>January 14, 2022</u>

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Name	<u>David Cooper</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Partner</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>January 13, 2022</u>

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Name	<u>David LeRay</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u><i>David LeRay</i></u>
Date	<u>1/14/2022</u>

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Name	<u>Christopher Seck</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan, LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>Jan. 13, 2022</u>

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Name	<u>David Chardack</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Law Clerk</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>1/14/2022</u>

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Name	<u>Lauren Shea Peretz</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u><i>Lauren Shea Peretz</i></u>
Date	<u>1/14/2022</u>

CERTIFICATION

The undersigned represents that:

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Name	<u>Alina Kovalenko</u>
Firm	<u>The Brattle Group</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u><i>Alina Kovalenko</i></u>
Date	<u>01/14/2022</u>

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Name	<u>Eannán Monaghan</u>
Firm	<u>Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u>EANNÁN MONAGHAN</u>
Date	<u>January 14, 2022</u>

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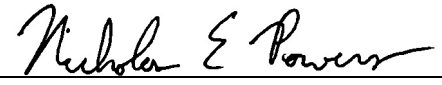
Name	<u>Findley Bowie</u>
Firm	<u>The Brattle Group</u>
Title	<u>Senior Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u><i>C. Findley Bowie III</i></u>
Date	<u>1/13/2022</u>

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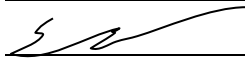
Name	<u>Nicholas Powers</u>
Firm	<u>The Brattle Group</u>
Title	<u>Principal</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>January 13, 2022</u>

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Name	<u>Eli LoCicero</u>
Firm	<u>The Brattle Group</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>1/13/2022</u>

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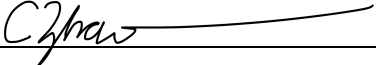
Name	<u>Kevin Neels</u>
Firm	<u>The Brattle Group</u>
Title	<u>Principal</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>1/14/2022</u>

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Name	<u>Christopher Zhao</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>1/13/2022</u>

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Name	<u>James Banovetz</u>
Firm	<u>The Brattle Group</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>1-19-2022</u>

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Name	<u>Misha Mubashar Khan</u>
Firm	<u>The Brattle Group</u>
Title	<u>Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u>MISHA M. KHAN</u>
Date	<u>1/19/2022</u>